(3)

No. 85-1626

Supreme Court, U.S.
FILED
JUN 11 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

CHARLES GOODMAN, RAMON L. MIDDLETON, ROMULUS C. JONES, JR., LYMAS L. WINFIELD, and UNITED POLITICAL ACTION COMMITTEE OF CHESTER COUNTY, DAVID DANTZLER, JR., JOHN R. HICKS, III, DOCK L. MEEKS, individually and on behalf of all others similarly situated,

Petitioners,

v.

LUKENS STEEL COMPANY, UNITED STEELWORKERS OF AMERICA (AFL-CIO-CLC), LOCAL 1165, UNITED STEELWORKERS OF AMERICA (AFL-CIO-CLC), and LOCAL 2295, UNITED STEELWORKERS OF AMERICA (AFL-CIO-CLC),

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

REPLY MEMORANDUM OF PETITIONERS

William H. Ewing
Arnold P. Borish*
Daniel Segal
HANGLEY CONNOLLY EPSTEIN
CHICCO FOXMAN & EWING
1429 Walnut Street, 14th Floor
Philadelphia, PA 19102
(215) 864-7700
Attorneys for Petitioners
**Counsel of Record*

PACKARD PRESS / LEGAL DIVISION, 10th & SPRING GARDEN STREETS, PHILA., PA. 19123 (215) 236-2000

TABLE OF CONTENTS

TABLE OF AUTHORITIES

I. This Court Should Decide The Appropriate Characterization, For Statute Of Limitations Purposes, To Be Given Claims Brought Under The Civil Rights Act Of 1866, 42 U.S.C. §1981.

Although the Union defendants correctly state that the Third Circuit is the only Court of Appeals to date that has decided how *Wilson v. Garcia* should apply to claims filed under Section 1981, the Union's suggestion that the Supreme Court should avoid deciding the appropriate characterization of Section 1981 claims is ill-considered. In the absence of such a determination by the Court, litigants will be unable to determine with any degree of certainty the statute of limitations for Section 1981 claims. If this issue is left unresolved, as the Union defendants suggest, needless litigation and lack of uniformity in statute of limitations determinations will continue. Indeed, the three District Court decisions outside the Third Circuit which have considered the effect of *Wilson v. Garcia* on Section 1981 statutes of limitation have each characterized Section 1981 differently. *See* Brief in Opposition for Union Respondents at p. 3 n.3. This is the very evil *Wilson v. Garcia* sought to eliminate. The Court has ended the uncertainty in the context of 42 U.S.C. §1983; there is no sound reason to allow such uncertainty to continue with respect to Section 1981.

The Union defendants also err in their conclusion that the application of different statutes of limitations with respect to Section 1981 and Section 1983 "would produce the 'bizarre' result of having identical causes of action against the same defendant governed by different limitations periods, depending solely on the statute that the plaintiff chooses to invoke." Brief in Opposition for Union Respondents at p. 4. The fact that different statutes of limitations govern different legal theories arising out of the same set of facts is commonplace in American jurisprudence and is not thought of as "bizarre." Thus, for example, the same set of facts may give rise to tort

and contract claims as well as to claims based on violation of a statute, all of which may be subject to differing limitations periods. Indeed, in the federal context the same conduct may violate several different securities statutes, each of which may carry a different statute of limitations.[1]

The bottom line is that the application of different statutes of limitations to different legal claims arising out of the same conduct reflects a legislative recognition that different legal theories involve different elements and need not be subject to the same time restrictions. Unlike Section 1983, Section 1981 is limited to *discrimination* based on *race* but applies to *private* conduct as well as conduct under color of state law. *See* Petitioners' Brief at p. 14 n.8. Moreover, the principles of *Wilson v. Garcia* do not require applying the Section 1983 limitations period to Section 1981 claims just because both statutes are occasionally applicable to the same set of facts. Because Section 1981 claims are more frequently grounded in patterned, economic roots, such claims are more analogous to claims of interference with economic relations and should be so characterized.

II. The Court Of Appeals Did Not Apply The Correct Standards To Decide Whether *Wilson v. Garcia* Should Be Applied Retroactively.

The Union respondents misstate the basic thrust of plaintiffs' argument based on *Chevron Oil Co. v. Huson,*

1. For example, actions for the same fraudulent conduct in connection with the sale of registered securities may be brought under §§11 and 12(2) of the Securities Act of 1933, 15 U.S.C. §§77k and 77l as well as under §10(b) of the Securities Exchange Act of 1934, 15 U.S.C. §78j. The claims under the Securities Act of 1933 are subject to the limitations provision contained in that Act, 15 U.S.C. §77m, while the claims under §10(b) of the Securities Exchange Act of 1934 are subject to the most analogous state limitations period. *Trecker v. Scag*, 679 F.2d 703, 706 (7th Cir. 1982), *cert. denied*, 105 S.Ct. 2140 (1985).

404 U.S. 97 (1971). Plaintiffs do not simply claim that the *Chevron* standards were erroneously applied to the particular law of Pennsylvania. Rather, plaintiffs show that (1) the Court of Appeals did not apply the *Chevron* standards in the present case, and (2) the Court of Appeals' subsequent explanation of its action in the present case was based upon a misstatement of the legal principles established by this Court in *Chevron*.

In the present case, the Court of Appeals based its decision to apply *Wilson* retroactively entirely on its citation of *Smith v. City of Pittsburgh*, 764 F.2d 188 (3d Cir.), *cert. denied*; 106 S. Ct. 349 (1985). That citation, however, did not call into play the *Chevron* principles because *Smith* was decided under a different set of limitations statutes from those applicable to the present case. Accordingly, the analysis performed in *Smith* was entirely different from the analysis which *Chevron* requires for the present case.

In *Al-Khazraji v. St. Francis College*, 784 F.2d 505 (3d Cir. 1986), the Court of Appeals stated that it had made *Wilson* retroactive in the present case because, when the present action was filed, "there was no established precedent in the Third Circuit to indicate the appropriate limitations period for Section 1981 claims." 784 F.2d at 512. Under *Chevron*, that statement does not justify retroactive application. *Chevron* does not require retroactive application in the absence of "established [circuit court] precedent." Rather, *Chevron* requires the court considering the question of retroactive application to consider whether the decision in question (*Wilson v. Garcia* in the present case) establishes "a new principle of law, *either* by overruling clear past precedent on which litigants may have relied . . . *or by deciding an issue of first impression whose resolution was not clearly foreshadowed.*" 404 U.S. at 106 (citation omitted) (emphasis added).

Neither the Court of Appeals nor the Union respondents cite *any* decision before this suit was filed in 1973

which foreshadowed the application of Pennsylvania's two-year personal injury statute of limitations. In fact, the Court of Appeals held in 1977 that the case law was "clear" and that "both Pennsylvania and federal courts applying Pennsylvania law [had] uniformly applied the six-year limitation." *Meyers v. Pennypack Woods Home Ownership Assoc.*, 559 F.2d 894, 902-03 (3d Cir. 1977). All of the cases cited by the Court of Appeals in support of this statute were decided before the complaint was filed in the present case. Thus, the Court of Appeals applied a different, more stringent criterion than the standards established by this Court for determining whether a newly-announced statute of limitations decision should be applied retroactively.

III. Conclusion

For the foregoing reasons, this Court should grant the Petition for a Writ of Certiorari.

Respectfully submitted,

William H. Ewing
Arnold P. Borish*
Daniel Segal
HANGLEY CONNOLLY EPSTEIN
CHICCO FOXMAN & EWING
1429 Walnut Street, 14th Floor
Philadelphia, PA 19102
(215) 864-7700
Attorneys for Petitioners
**Counsel of Record*